

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
Kao, Peter N.

Serial No. 10/801,729

Filed: March 15, 2004

For: USE OF ANTIPROLIFERATIVE  
AGENTS IN THE TREATMENT AND  
PREVENTION OF PULMONARY  
PROLIFERATIVE VASCULAR  
DISEASES



Art Unit: 1614

Examiner: Kwon, Brian Yong S

Atty Docket No. STAN-352

## DECLARATION UNDER 37 C.F.R. §1.132; AND MPEP 716.10

The Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

I, Peter N. Kao, do hereby declare as follows:

I am a co-inventor of the above captioned patent application. I am a co-author of the research publication: Nishimura *et al.* (2002) American Journal of Respiratory and Critical Care Medicine, Vol. 166, pages 1403-08. I have read and understood the Office Action of November 21, 2006.

The presently pending claims have been rejected under 35 U.S.C. 102(a) as anticipated or made obvious by the publication of Nishimura *et al.* (2002). The published article was a description, in part, of the invention conceived by the inventors of the above captioned patent application: Peter N. Kao, Ronald G. Pearl, Toshihiko Nishimura and John L. Faul; and as such, is not a publication by "another".

The article lists as co-authors Gerald J. Berry and Laszlo T. Vaszar, who are not named as co-inventors. As set forth by the court in *In re Katz*, 215 U.S.P.Q. 14; and MPEP §715.01(c), authorship of an article by itself does not raise a presumption of inventorship with respect to the subject matter disclosed in the article. Thus, the coauthors may not be presumed to be co-inventors merely from the fact of co-authorship.

The conceptualization of these experiments and the formulation of the invention were the sole work of the inventors. The contribution of Gerald J. Berry and Laszlo T. Vaszar to the

work was overseen and directed by ourselves. Thus, the contributions of Gerald J. Berry and Laszlo T. Vaszar do not represent an inventive contribution to the subject matter claimed in the present application.

I hereby declare that all statements made herein of my own knowledge are true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Date: 2/15/07

By Peter N. Kao  
Peter N. Kao, Ph.D.

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